

Title	Habeas Corpus Proceedings in Superior Court (amend and renumber Cal. Rules of Courts, rules 4.500; amend rule 201; and adopt rules 4.550 and 4.552)
Summary	The proposed rule amendments and adoption of new rules would update and clarify the procedural rules for petitions for writ of habeas corpus.
Source	Criminal Law Advisory Committee
Staff	Joshua Weinstein, 415-865-7688
Discussion	<p>Habeas corpus proceedings in superior court are currently governed by rules of court, statute, and case law. Rule 4.500 of the California Rules of Court sets forth some of the necessary procedures for adjudication of petitions for writ of habeas corpus. But several important procedures are not addressed in the rule and are difficult to find or follow. Under this proposal, rule 4.500 would be significantly amended and renumbered as 4.551, and two new rules—4.550 and 4.552—would be added. Together, these three rules would outline the entire habeas corpus proceedings in a logical, comprehensive format.</p> <p>Proposed rule 4.550 sets forth the application of the rule and defines the terms used in habeas corpus proceedings. Included are definitions for (1) “an order to show cause” (also known as an order “granting the writ”), which occurs upon a finding that the petitioner has made a prima facie showing that he or she is entitled to relief (see <i>People v. Romero</i> (1994) 8 Cal.4th 728, 737–738; Pen. Code, § 1476), and (2) “return,” which is the respondent’s argument against granting the relief sought by the petitioner.</p> <p>The application and definitions are based on Penal Code section 1473 et seq. (the provisions addressing habeas corpus proceedings) and two California Supreme Court cases: <i>People v. Duvall</i> (1995) 9 Cal.4th 464, and <i>People v. Romero, supra</i> 8 Cal.4th 728. “Granting the writ” originates from Penal Code section 1475 and caselaw uses that term synonymously with issuing an “order to show cause.” (See, e.g., <i>People v. Duvall, supra</i>, 9 Cal.4th at pp. 474-475 and <i>People v. Romero, supra</i>, 8 Cal.4th at pp. 737–738.) Indeed, the current version of rule 4.500 use the two terms synonymously. The proposed rule changes the focus from both terms, to using “order to show cause” in every context other than the definition. This change in focus stems from the possible confusion between granting the relief sought (i.e., the</p>

petitioner achieving a reversal or change in confinement) and granting the writ (i.e., the petitioner setting forth a prima facie case for relief).

Proposed rule 4.551 is a revision of rule 4.500 (formerly rule 260) with extensive additions. The amendments would:

- Incorporate the provisions of rule 201(n) for the form of the petition for writ of habeas corpus as rule 4.551(a)(1)–(2).
- Require that the petition be “immediately” delivered to “the presiding judge or his or her designee.” This would ensure that the petition is ruled upon within the pre-existing 30-day time limit.
- Incorporate the informal response procedure for the trial courts. Under rule 60, the appellate courts are allowed to solicit an informal response. However, currently there is no similar provision allowing such a request in the trial courts. (See *Durdines v. Superior Court* (1999) 76 Cal.App.4th 247.)
- Modify subdivision (d), relettered as (g), to require notification to all parties upon any ex parte communication and to prohibit ex parte communication after the court grants the writ.
- Update and clarify language within the rule.

Proposed rule 4.552 addresses habeas corpus jurisdiction. The rule provides that the petition should be heard by the court in which it is filed except in two circumstances: when the petition challenges the terms of a judgment but is not filed in the county of conviction, and when the petition challenges the condition of confinement but is not filed in the county in which the petitioner is confined. In those two limited circumstances, under rule 4.552 the court may—without determining whether a prima facie case for relief exists—transfer the petition to the more relevant county.

Although the procedure outlined in proposed rule 4.552 differs from that set forth by the California Supreme Court’s holding in *Griggs v. Superior Court* (1976) 16 Cal.3d 341, we believe it is within the powers of the Judicial Council to create this transfer procedure. In

Griggs, the Supreme Court held that any superior court has jurisdiction to hear a habeas corpus matter and fashion a transfer procedure. Under that procedure, the county in which the petition is filed first determines whether the petition states a prima facie case for relief. If the court finds a prima facie case for relief, the court is to grant the petition and transfer to the more relevant court. (*Id.* at pp. 346–47.) The *Griggs* transfer procedure, however, is based on the court’s inherent rule-making authority, not on constitutional requirements. (*Ibid.*) Therefore, the council in exercising its constitutional authority to adopt rules of procedure, has the authority to adopt a rule requiring a different procedure.

Finally, subdivision (c) of proposed rule 4.552 restates the constitutional mandate that the petition must be heard by a single judge of the superior court. (See Cal. Const., art. IV, § 10.)

Attachments

Rule 4.500 of the California Rules of Court would be amended and renumbered, rule 201 would be amended, and rules 4.550 and 4.552 would be adopted, effective January 1, 2002, to read:

Rule 4.550. Habeas corpus application and definitions

(a) [Application] This rule applies to habeas corpus proceedings in the superior court under Penal Code section 1473 et seq. or any other provision of law authorizing relief from unlawful confinement or unlawful conditions of confinement.

(b) [Definitions] In this rule, the following definitions apply:

(1) A “petition for writ of habeas corpus” is the petitioner’s initial filing that commences a proceeding.

(2) An “order to show cause” is an order directing the respondent to file a return. The order to show cause issues upon a prima facie showing that the petitioner is entitled to relief. An order to show cause may also be referred to as granting the writ.

(3) The “return” is the respondent’s statement of reasons why the court should not grant the relief requested by the petitioner.

(4) The “denial” is the petitioner’s pleading in response to the return. The denial may be also referred to as the traverse.

(5) An “evidentiary hearing” is a hearing held by the trial court to resolve contested factual issues.

(6) An “order on writ of habeas corpus” is the court’s order granting or denying the relief sought by the petitioner.

Rule 4.50051 Habeas corpus proceedings

(a) [Petition; ~~order to show cause~~ form and court ruling]

(1) The petition must be on the form approved by the Judicial Council, *Petition for Writ of Habeas Corpus* (form MC-275), and must be served as required in Penal Code section 1475.

1 (2) For good cause, a court may also accept for filing a petition that
2 does not comply with this rule. A petition submitted by an attorney
3 need not be on the Judicial Council form. However, a petition that is
4 not on the Judicial Council form must comply with Penal Code
5 section 1474 and must contain the pertinent information specified in
6 form MC-275, including the information required regarding other
7 petitions, motions, or applications filed in any court with respect to
8 the conviction, commitment, or issue.
9

10 (3) Upon filing, the clerk of the court must immediately deliver the
11 petition to the presiding judge or his or her designee. The court
12 must rule on ~~Unless a petition for a writ of habeas corpus is sooner~~
13 ~~denied for reasons stated as required by subdivision (e), the court~~
14 ~~shall, within 30 days after the petition is filed, or received on~~
15 ~~transfer, issue the writ or order the respondent to show cause why~~
16 ~~the relief sought in the petition should not be granted. If the court~~
17 fails to rule on the petition for writ of habeas corpus within 30 days
18 of its filing, an order to show cause is deemed to have issued under
19 subdivision (c) of this rule.
20

21 (4) For the purposes of subdivision (a)(3) of this rule, the court rules on
22 the petition by:
23

24 (A) Issuing an order to show cause under subdivision (c) of this
25 rule.
26

27 (B) Denying the petition for writ of habeas corpus.
28

29 (C) Requesting an informal response to the petition for writ of
30 habeas corpus under subdivision (b) of this rule.
31

32 **(b) [Informal response]**
33

34 (1) Before passing on the petition, the court may request an informal
35 response from:
36

37 (A) The respondent or real party in interest; or
38

39 (B) The custodian of any record pertaining to the petitioner's case,
40 directing the custodian to produce the record or a certified
41 copy to be filed with the clerk of the court.
42

1 (2) A copy of the request must be sent to the petitioner. The informal
2 response, if any, must be served upon the petitioner by the party of
3 whom the request is made. The informal response must be in writing
4 and must be served and filed within 15 days. If any informal
5 response is filed, the court must notify the petitioner that he or she
6 may reply to the informal response within 15 days from the date of
7 service of the response upon the petitioner. If the informal response
8 consists of records or copies of records, a copy of every record and
9 document furnished to the court must be furnished to the petitioner.

10
11 (3) After receiving an informal response, the court may not deny the
12 petition until the petitioner has filed a timely reply to the informal
13 response or the 15 day period provided under subdivision (b)(2) of
14 this rule has expired.

15
16 (c) [Order to Show Cause] The court must issue an order to show cause if
17 the petitioner has made a prima facie showing that he or she is entitled to
18 relief. An order to show cause is only a determination that the petitioner
19 has made a showing that he or she may be entitled to relief, and does not
20 grant the relief sought in the petition.

21
22 (d) [Return] If an order to show cause is issued as provided in subdivision
23 (c), or if the court does not rule on the petition in a timely manner as
24 provided in subdivision (a)(3), the respondent may, within 30 days
25 thereafter, file a return. The return must comply with Penal Code section
26 1480 and must be served on the petitioner.

27
28 ~~(b)(c)~~ [Return; dDenial] Within 30 days after service and filing of a return
29 to an order to show cause, the petitioner may ~~serve on respondent~~ and file
30 a denial. Any material allegation of the petition not controverted by the
31 return, and any material allegation of the return not denied, ~~shall is~~ be
32 deemed admitted for purposes of the proceeding. The denial must
33 comply with Penal Code section 1484 and must be served on the
34 respondent.

35
36 ~~(e)(f)~~ [Evidentiary hearing; when required] Within 30 days after the
37 filing of any denial or, if none is filed, after the expiration of the time for
38 filing a denial, the court ~~shall~~ must either grant or deny the relief sought
39 by the petition or order notice to be given of an evidentiary hearing. An
40 evidentiary hearing is required if, after considering the verified petition,
41 the return, any denial, any affidavits or declarations under penalty of
42 perjury, and matters of which judicial notice may be taken, the court finds
43 there is a reasonable likelihood that the petitioner may be entitled to

1 relief and the ~~interests of justice require the petitioner's presence at a~~
2 ~~hearing.~~ petitioner's entitlement to relief depends on the resolution of an
3 issue of fact. The petitioner must be produced at the evidentiary hearing
4 unless the court, for good cause, directs otherwise.

5
6 **(d)(g)** **[Ex parte communications; service on parties]** If the court
7 communicates ex parte with any person other than the petitioner regarding
8 the allegations of the petition, it ~~shall set the matter for hearing unless~~
9 must

10
11 ~~(1) the relief sought in the petition is granted, or~~

12
13 ~~(2) the court finds, after affording petitioner an opportunity to respond,~~
14 ~~that the matter has become moot.~~

15
16 ~~In addition, the court shall give each party written notice of the any ex~~
17 ~~parte oral communication received by the court and a copy of any written~~
18 ~~communication sent or received by the court unless the writing is~~
19 ~~accompanied by proof of service on each party. Upon issuing an order to~~
20 show cause, the court must not have ex parte communication regarding the
21 allegations in the petition.

22
23 **(e)(h)** **[Reasons for denial of petition]** Any order denying a petition for a
24 writ of habeas corpus ~~shall~~ must contain a brief ~~recital~~ statement of the
25 reasons for the denial. An order declaring the petition to be "denied" is
26 insufficient.

27
28 **(f)(i)** **[Extending or shortening time]** On motion of any party or on the
29 court's own motion, for good cause stated in the order, the court may
30 shorten or extend the time for doing any act under this rule. A copy of the
31 order ~~shall~~ must be mailed to each party.

32
33 **Rule 4.552 Habeas corpus jurisdiction**

34
35 **(a)** **[Proper court to hear petition]** Except as set forth in subdivision
36 (b)(2), the petition should be heard and resolved in the court in which it is
37 filed.

38
39 **(b)** **[Transfer of petition]**

40
41 (1) The superior court in which the petition is filed must determine
42 whether, based on the allegations of the petition, the matter should
43 be heard by it or in the superior court of another county.

1
2 (2) If the superior court in which the petition is filed determines that the
3 matter is more properly heard by the superior court of another
4 county, it may nonetheless retain jurisdiction in the matter or,
5 without first determining whether a prima facie case for relief
6 exists, order the matter transferred to the other county. Transfer
7 may be ordered in the following circumstances:
8

9 (A) If the petition challenges the terms of a judgment, the matter
10 should be transferred to the county in which judgment was
11 rendered.
12

13 (B) If the petition challenges the conditions of an inmate's
14 confinement, it should be transferred to the county in which the
15 petitioner is confined. A change in the institution of
16 confinement that effects a change in the conditions of
17 confinement constitutes good cause to deny the petition.
18

19 (3) The transferring court must specify in the order of transfer the
20 reason for the transfer.
21

22 (4) If the receiving court determines that the reason for transfer is
23 inapplicable, the receiving court must, within 30 days of receipt of
24 the case, order the case returned to the transferring court. The
25 transferring court must retain and resolve the matter as provided by
26 these rules.
27

28 **(c) [Single judge must decide petition]** A petition for writ of habeas
29 corpus filed in the superior court must be decided by a single judge; it
30 must not be considered by the appellate division of the superior court.

1 **Rule 201. Form of papers presented for filing**

2
3 **(a)–(m) *****

4
5 **~~(n) [Application for writ seeking release or modification of custody]~~**

6
7 ~~(1) A petition for a writ of habeas corpus or for any other writ seeking~~
8 ~~the release from or modification of the conditions of custody of one~~
9 ~~who is confined under the process of any court of this state in a state~~
10 ~~or local penal institution, hospital, narcotics treatment facility, or~~
11 ~~other institution shall be on the form approved by the Judicial~~
12 ~~Council, *Petition for Writ of Habeas Corpus* (Form MC-275).~~

13
14 ~~(2) For good cause, a court may also accept for filing a petition that does~~
15 ~~not comply with this rule. A petition submitted by an attorney need not~~
16 ~~be on the Judicial Council form.~~

17
18 ~~(3) A petition that is not on the Judicial Council form shall contain the~~
19 ~~pertinent information specified in that form, including the information~~
20 ~~required regarding other petitions, motions, or applications with~~
21 ~~respect to the conviction, commitment, or issue in any court.~~